

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUAWEI DEVICE CO., LTD., and  
HUAWEI DEVICE USA, INC.,  
Defendants.

NO. CR19-010RSM

PROTECTIVE ORDER PURSUANT TO  
SECTION 4 OF CLASSIFIED  
INFORMATION PROCEDURES ACT  
AND FEDERAL RULE OF CRIMINAL  
PROCEDURE 16(d)(1)

This matter has come before the Court on the Government's Classified *In Camera*,  
*Ex Parte* Motion for a Protective Order Pursuant to CIPA Section 4 and Fed. R. Crim. P.  
16(d)(1) ("Government's Motion for a Protective Order"). By its motion, the government  
requested that the Court, pursuant to CIPA § 4, Fed. R. Crim. P. 16(d)(1), and the  
applicable law: (1) conduct an *in camera*, *ex parte* review of the government's  
submission; (2) authorize the government to withhold specified classified information  
from discovery; and (3) order that the government's motion and accompanying exhibits  
shall not be disclosed to the defense and shall be sealed and preserved in the records of  
the Court to be made available for any future review of these proceedings.

1 The Court, having carefully considered the government's motion and  
2 memorandum of law, and supporting materials filed therewith, **GRANTS** the  
3 Government's Motion for a Protective Order in its entirety.

4 The Court finds that the Government's Motion for a Protective Order was properly  
5 filed *in camera, ex parte* for this Court's review, pursuant to CIPA § 4 and Fed. R. Crim.  
6 P. 16(d)(1). The submission contains classified information that requires protection  
7 against unauthorized disclosure for reasons of national security such that its disclosure to  
8 the defense, or to the public, reasonably could be expected to cause damage to national  
9 security. The Court has conducted an *in camera, ex parte* review.

10 On the basis of the Court's independent review of the information and the  
11 arguments set forth in the Government's Motion for a Protective Order and the classified  
12 material in support of the motion, the Court finds that the classified information  
13 referenced in the government's motion and memorandum of law implicates the  
14 government's classified information privilege because the information is properly  
15 classified and its disclosure could cause serious damage to the national security of the  
16 United States. Furthermore, the Court finds that none of the classified information is  
17 exculpatory, *see Brady v. Maryland*, 373 U.S. 83 (1963), and that the information is not  
18 impeachment material. *See Giglio v. United States*, 405 U.S. 150 (1972).

19 Additionally, the Court finds that the "relevant and helpful" standard articulated in  
20 *United States v. Rovario*, 353 U.S. 53 (1957), *United States v. Yunis*, 867 F.2d 617 (D.C.  
21 Cir. 1989), and *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1261 (9<sup>th</sup> Cir. 1998),  
22 is the appropriate standard by which to analyze the discoverability of classified  
23 information where, as here, the government has properly invoked the classified  
24 information privilege. To this end, the Court finds that in applying the  
25 *Rovario/Yunis/Klimavicius-Viloria* standard, none of the classified information  
26 referenced in the government's motion is relevant and helpful to the defense.  
27 Furthermore, the Court finds that the national security damage from disclosure to the  
28 defense, as articulated in the *in camera, ex parte* motion and memorandum of law and

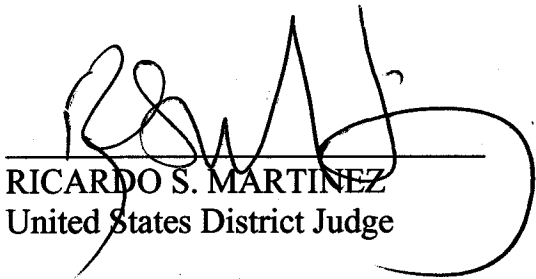
1 accompanying materials, outweighs the defendant's need for the information at issue.

2 This Order also applies to the government's discovery obligations under Federal Rule of  
3 Criminal Procedure 16, and *Brady v. Maryland*, *Giglio v. United States* and their progeny  
4 with regard to the information described herein.

5 Accordingly, **IT IS ORDERED** that the government is authorized to withhold the  
6 specified classified information outlined above from discovery to the defense.

7 **IT IS FURTHER ORDERED** that the government's motion, memorandum of  
8 law, and the accompanying materials shall not be disclosed to the defense, and shall be  
9 sealed and maintained in a facility appropriate for the storage of such classified  
10 information by the Classified Information Security Officer as the designee of the Clerk of  
11 Court, in accordance with established security procedures, for any future review, until  
12 further order of this Court.

13 **IT IS SO ORDERED**, this 2 day of <sup>July</sup>~~June~~, 2019.

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17   
18 RICARDO S. MARTINEZ  
19 United States District Judge

20 Presented by:

21 /s/ Todd Greenberg  
22 TODD GREENBERG  
23 THOMAS WOODS  
24 SIDDHARTH VELAMOOR  
25 Assistant United States Attorneys  
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